# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

ALLTEK PLUMBING, HEATING AND AIR CONDITIONING CO.

and

Case 8-CA-34242

OHIO STATE ASSOCIATION OF PLUMBING AND PIPEFITTERS LOCAL 776, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA

ALLTEK PLUMBING, HEATING AND AIR CONDITIONING CO.

and

Case 8—CA—34251

UA LOCAL 50 PLUMBERS AND STEAMFITTERS, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITES STATES AND CANADA

Steven Wilson, Esq., for the General Counsel. (No appearance by the Respondent.)

#### **DECISION**

## STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Bowling Green, Ohio, on January 19, 2005. The charge in Case 8–CA–34242 was filed by the Ohio State Association of Plumbing and Pipefitters Local 776, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Local 776) on May 8, 2003. The charge in Case 8–CA–34251 was filed by U.A. Local 50, Plumbers and Steamfitters, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Local 50) on May 12, 2003, and the first amended charge in Case 8–CA–34251 was filed by Local 50 on December 29, 2003. The

<sup>&</sup>lt;sup>1</sup> All dates are from November 2002 to May 2003 unless otherwise indicated.

consolidated complaint, issued on April 30, 2004, alleges that the Respondent, Alltek Plumbing Heating and Air Conditioning Co., violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by (1) telling employees on May 6 and 27 they would not be hired because of their union membership and activities, and (2) refusing, since March 24, to consider certain employment applicants for hire because of their union membership and activities.<sup>2</sup> In its answer to the complaint, filed April 22, 2004, the Respondent denied the allegations and made several assertions: (1) it only hires qualified applicants for available positions; (2) the applicants appeared in a group, moved slowly, made an unfavorable impression on the staff and may have had transportation problems; (3) most of the applicants were not plumbers; (4) the applicants appeared to be "casing" the Respondent's office; and (5) with respect to the only applicant he was interested in, Michael R. Sherman, the reference listed on his application never heard of him <sup>3</sup>

The Respondent was served with notice of the hearing, but did not appear.<sup>4</sup> At the hearing, the parties were afforded a full opportunity to call and examine witnesses, present oral and written evidence, argue orally on the record and file posthearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel, I make the following

Findings of Fact

## I. Jurisdiction

The Respondent, a small corporation with an office and place of business in Delphos, Ohio, is engaged in providing plumbing, heating and air-conditioning services to residential and commercial customers. During the 12-month period ending December 31, 2002, the Respondent's gross revenues exceeded \$500,000 and it purchased and received goods and materials in excess of \$50,000 from outside the State of Ohio.<sup>5</sup> Local 50, an active labor organization with offices in Northwood, Ohio, has been in existence since 1891. Local 776, an active labor organization with offices in Lima, Ohio, has been in existence since 1937.<sup>6</sup> Accordingly, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 50 and Local 776 are labor organizations within the meaning of Section 2(5) of the Act.<sup>7</sup>

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<sup>35 &</sup>lt;sup>2</sup> GC Exhs. 1(a), (c), and (e).

<sup>&</sup>lt;sup>3</sup> The General Counsel elected to treat the Respondent's letter as an answer. GC Exh. 17.

<sup>&</sup>lt;sup>4</sup> The Respondent received adequate notice of the hearing, but elected not to appear. Tr. 7–9; GC Exhs. 1(k), 1(o), 1(q), 1(s). Accordingly, it was appropriate to proceed with the hearing and allow the General Counsel and the charging parties to submit evidence in support of the complaint. *Bristol Manor Health Care Center*, 295 NLRB 1106 (1989).

<sup>&</sup>lt;sup>5</sup> A commerce questionnaire submitted by the Respondent and signed by its operations manager, Greg Smith, establishes that the Respondent had gross revenues in excess of \$500,000 (item F) and out-of-state purchases in excess of \$50,000 (item B) during 2002, the last year prior to the commission of the alleged unfair labor practices. GC Exhs. 10, 12; Tr. 29, 52–53.

<sup>&</sup>lt;sup>6</sup> This finding is based on the credible testimony of Union Representatives Robert J. Lynn Jr. and Steven A. Horn. Tr. 17–19, 68–70.

<sup>&</sup>lt;sup>7</sup> Jurisdiction is alternatively premised on the Respondent's failure to comply with the General Counsel's subpoena. The Respondent was served with a subpoena *duces tecum* requiring it to produce commerce-related information. GC Exhs. 4, 5, 6, 13, 14, and 15; Tr. 25–27, 62–63. It failed to do so and, based on the credible testimony of David Settlemire and Lynn Continued

## II. Alleged Unfair Labor Practices

# A. The Respondent's Operations

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The Respondent is a plumbing, heating and air conditioning contractor located in Delphos, Ohio. Christopher Spicer is president. His brother, Andy Spicer, serves as the Respondent's cost estimator and field supervisor. Each had responsibility for employee hiring, firing, discipline, and the direction of work.<sup>8</sup>

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During 2002, the Respondent was awarded school plumbing and pipefitting installation contracts by the Gibsonburg Exempted Village School District and Auglaize County.<sup>9</sup> Curtis Metzger was the Respondent's project manager on the Gibsonburg project. He was involved in interviewing some employment applicants, issued the work assignments, disciplined and terminated employees. Prior to March 2003, the Respondent employed up to four plumbers on the Gibsonburg project. In March 2003, the Respondent started hiring additional plumbers.<sup>10</sup>

# B. The Respondent's Refusal to Hire or Consider for Hire Union Members

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In November, 2002, Michael R. Sherman, an organizer for Locals 50 and 776, heard that the Respondent was awarded the Gibsonburg and Auglaize projects. He decided to target the Respondent, a nonunion contractor, for employment by members of Locals 50 and 776. On November 12, Sherman, Steven A. Horn, Laura Baldridge, and Richard Stoermer visited the Respondent's office. They expressed interest in applying for jobs and the receptionist provided them with applications. Sherman, Horn, Baldridge, and Stoermer proceeded to fill out the applications and handed them to the receptionist. The receptionist informed them that applications are kept on file for 1 year. 11 Each application reflected membership in either Local 50 or Local 776. In addition, each wore a hat and/or a jacket identifying their membership in either Local 50 or Local 776.12 On November 15, a second group of union members visited the Respondent's office. Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., and Timothy M. Pearson, each submitted a job application to the receptionist, Each application indicated either membership in a union or prior work experience with union contractors. 13 On January 8, Ruben Longoria, Michael Smith, and Stephen Cowan visited the Respondent's office and submitted job applications. Each application indicated either union membership or prior work experience with union contractors. In addition, Ruben Longoria and Smith wore union

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that the Respondent's out of State activities exceeded \$1500 in 2000, jurisdiction is appropriate. *Tropicana Products,* 122 NLRB 121, 123 (1958); Valentine Painting and Wallcovering, Inc., 331 NLRB 883, 884 (2000). Tr. 19–20, 41–43.

<sup>&</sup>lt;sup>8</sup> This finding is based on the credible testimony of Lynn and Settlemire. Tr. 20–21, 29–31. <sup>9</sup> GC Exhs. 8–9.

<sup>&</sup>lt;sup>10</sup> This finding is based on the credible testimony of Settlemire. Tr. 36–39.

<sup>&</sup>lt;sup>11</sup> The receptionist was the Respondent's agent for preemployment matters and, therefore, the Respondent is charged with knowledge of what the applicants were wearing. *AMI, Inc.,* 319 NLRB 536, 540 (1995).

<sup>&</sup>lt;sup>12</sup> This finding was based on copies of applications submitted and the credible testimony of Sherman, Horn, Baldridge, and Stoermer. Tr. 55–57, 70–73, 79–82, 84–88; GC Exhs. 11, 16, 18–19. The application of Horn erroneously lists his starting date with Local 776 as 1969. GC Exh. 16. The correct date is 1996. Tr. 68.

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<sup>&</sup>lt;sup>13</sup> This finding is based on the credible testimony of Farnsworth, Jacobs, Kish, Pearson, and Albert Longoria Sr. Tr. 90–105, 108–120; GC Exhs. 20–24.

jackets.<sup>14</sup> On February 11, Albert Longoria Jr. and Steven W. Tkaczyk visited the Respondent's office and submitted job applications. Albert Longoria Jr.'s application indicated union membership and prior experience with union contractors. In addition, he wore a union jacket.<sup>15</sup> The applications of all of the foregoing applicants established that each was qualified for positions as plumbers.

Nevertheless, the Respondent never called any of the aforementioned 14 applicants in for an interview. The Respondent did, however, hire two people to work on the Gibsonburg project—Clifford Porteous on March 24 and Jerry Lance on April 28. They were utilized as plumbers, even though they were only qualified as service technicians and did not have extensive training in plumbing or welding.<sup>16</sup>

In an affidavit, sworn to on March 18, 2004, Christopher Spicer stated that he "really never looked at the applications of the employees named in the charges." In a subsequent letter to the General Counsel, dated April 22, 2004, he provided additional reasons why he refused to consider the alleged discriminates: (1) he hires one person at a time for an available job and that person would be the most highly qualified person for the job; (2) the applicants "came in truckloads as a group and made an unfavorable impression on my office staff"; (3) the applicants were "casing" his office; (4) since they came in a truck, he "naturally questioned transportation problems"; (4) the applicants "moved slowly"; and (5) most of the applicants were not plumbers or pipefitters. In addition, he allegedly considered Sherman's application, but a contact at one of his prior employers, Tilton Corp., never heard of Sherman. However, Sherman's application did not list Tilton Corp. as a prior employer. 18

# C. The Respondent's Interference With Employees' Section 7 Rights

Not having received a response to his job application, Tkaczyk and another union member, Richard Tamburro, went to the Gibsonburg job site on May 6. They met with Metzger, the project manager. Metzer asked about their experience in plumbing and pipefitting, and had Tamburro fill out an application. During their discussion, Tkaczyk explained that they were unemployed and had been sent there by the union. Metzger opined that, with their experience, they would "be an asset to the job." However, Metzger needed to contact his supervisor and "was pretty sure [they] would not get the job because the boss does not want union members on his job, he does not want to have a union shop.<sup>19</sup>

On May 27, John Rhodes, a Local 50 organizer, and Bob Schick, a Local 50 business agent, visited the Gibsonburg jobsite and met with Metzger. Rhodes asked Metzger whether they would be hired if they applied for a job. Rhodes replied that it was unlikely that they would

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<sup>&</sup>lt;sup>14</sup> This finding is based on the credible testimony of Ruben Longoria, Smith, and Cowan. Tr. 122–138; GC Exhs. 25–27.

<sup>&</sup>lt;sup>15</sup> This finding is based on the credible testimony of Albert Longoria Jr. and Tkaczyk. Tr. 140–143, 145–149; GC Exhs. 28–29.

<sup>&</sup>lt;sup>16</sup> In his supplemental affidavit submitted to the General Counsel, Christopher Spicer stated that Lance was a plumber, while Porteous was merely a helper. Settlemire's credible testimony, as well as the employee contact list attached to the affidavit, established that Porteous was used and paid as a plumber. Tr. 40–41; GC Exh. 2, p. 3, 5.

<sup>&</sup>lt;sup>17</sup> GC Exh. 2, p.3.

<sup>&</sup>lt;sup>18</sup> GC Exhs. 2, 11.

<sup>&</sup>lt;sup>19</sup> This finding is based on the credible testimony of Tkaczyk. Tr. 147–150.

be hired because his supervisor, Christopher Spicer, "was afraid to get involved with the unions" 20

Christopher Spicer's disdain for union involvement was not new. David Settlemire worked for the Respondent as a plumber from August 2001 to September 2003. During his job interview in August 2001, Christopher Spicer asked Settlemire whether he had ever been involved with a union. Settlemire denied any such involvement. He was hired and, thereafter, dealt with Andy Spicer in the field. Throughout Settlemire's employment by the Respondent, Andy Spicer would "slander on the union" and promised that the Respondent "would close the doors before [it] would ever go union." He made similar comments during the Gibsonburg project, which started in September 2002.<sup>21</sup> Moreover, in an earlier unfair labor practice proceeding involving the Respondent, Christopher Spicer was found to have committed several antiunion acts in violation of Section 8(a)(1) and (3) in 1996.<sup>22</sup>

15 Discussion

# I. The 8(a)(3) Violations

## A. The Refusal to Consider Hiring the Discriminatees

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The General Counsel alleges that the Respondent violated Section 8(a)(3) by failing to consider hiring Horn, Sherman, Stoermer, Baldridge, Farnsworth, Jacobs, Kish, Albert Longoria Sr., Albert Longoria Jr., Ruben Longoria, Pearson, Cowan, Smith, and Tkaczyk. The Respondent, in Christopher Spicer's answer to the complaint, conceded that it did not "really" look at the applications of any of the discriminatees, but attributed that to a potpourri of reasons: the belief that most of the applicants were neither plumbers nor pipefitters; a practice of hiring the most qualified applicant for an available position; they moved too slowly; they came in a group and, therefore, may have had transportation problems, and were "casing" his office.

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To establish a discriminatory refusal to consider, the General Counsel must establish the following: (1) that the Respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment. Furthermore, the Board has long held that hiring need not take place in order to find an unlawful refusal to consider union applicants for employment. If the General Counsel establishes these elements, the burden will shift to the Respondent to show that it would not have considered the applicants even in the absence of their union activity or affiliation. If the Respondent fails to meet its burden, then a violation of Section 8(a)(3) is established. *FES*, 331 NLRB 9, 15 (2000), citing *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

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Christopher Spicer's affidavit of March 18, 2004 confirmed the credible testimony of the discriminatees that they were not included in the Respondent's hiring process. Despite calls to the Respondent by most of the discriminatees over the next several months, none were called in for interviews. Moreover, none of their employment references were called, including those listed by Sherman. Christopher Spicer's assertion that he considered Sherman's application

<sup>&</sup>lt;sup>20</sup> This finding is based on the credible testimony of Rhodes. Tr. 154.

<sup>&</sup>lt;sup>21</sup> This finding is based on the credible testimony of Settlemire. Tr. 31–33.

<sup>&</sup>lt;sup>22</sup> Alltek Plumbing, Heating and Air Conditioning Co., J.D. 164–97, November 5, 1997 (no exceptions filed).

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was false, since he purportedly checked a "reference" that was not listed on his application. Accordingly, it is clear that all of the discriminatees were excluded from the hiring process.

The credible evidence also established that the Respondent knew that the discriminatees were union members and held that against them. First, all of their applications revealed either membership in Local 50 or Local 776 and/or prior employment by a union contractor. Most of the discriminatees also wore union hats and/or jackets displaying a union emblem. Second, there was significant evidence of antiunion animus on the part of Christopher Spicer and Andy Spicer, each of whom was a supervisor within the meaning of Section 2(11) of the Act. In 1996, Christopher Spicer was found to have committed several violations of Section 8(a)(1) and (3). In 2001, he asked an employment applicant, David Settlemire, whether he had ever been involved with a union. Furthermore, throughout Settlemire's employment by the Respondent, Andy Spicer spoke negatively about union activity and threatened that the Respondent would close before capitulating to a union. That animus filtered down to the Respondent's field supervisor on the Gibsonburg project, Metzger. On May 6, Metzger informed Tkaczyk and Tamburro that, even though they were qualified, they would not be hired because top management did not want a union to come in. Metzger also made similar statements to two union organizers on May 27.

The burden having shifted to the Respondent, there is no evidence that the Respondent would not have considered these applicants in the absence of their union activities. The notion that members of a group arriving on a truck would not have their own transportation was baseless and indefensible. Applicants who apply in a group are engaged in protected activities and an employer may not ignore or reject their applications as a result. *Braun Electric*, 324 NLRB 1 (1997). Furthermore, Christopher Spicer's false assertion that none were plumbers when, in fact, all had such experience listed on their resumes, undermines the credibility of any assertion on his part that they walked too slow or were casing his office. Under the circumstances, I conclude that the Respondent violated Section 8(a)(3) by failing to consider all 14 discriminatees for hire.

# B. The Refusal to Hire Qualified Applicants

The General Counsel alleges that the Respondent also violated Section 8(a)(3) by failing to hire Sherman and Horn. As previously discussed, the Respondent provided a host of groundless excuses as to why none were interviewed, but conceded that Sherman was qualified for a plumbers position.

To establish a discriminatory refusal to hire, the General Counsel must establish that: (1) the Respondent was hiring or planned to hire at the time of the unlawful conduct; (2) the applicants were qualified or the employer has not always followed such requirements or the requirements were pretextual; and (3) antiunion animus contributed to the decision not to hire the applicants. In cases involving numerous applicants, the General Counsel need only show that one applicant was discriminated against to establish a refusal-to-hire violation warranting a cease-and-desist order. If these elements are met, the burden shifts to the Respondent to show it would not have hired the applicants anyway. If the Respondent fails to show that it would have made the same hiring decisions even in the absence of union activity or affiliation, then a violation of Section 8(a)(3) has been established. *FES*, 331 NLRB at 12, citing *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Sherman and Horn applied for jobs on November 12. As their applications were on file for 1 year, it is reasonable to infer that the unlawful conduct occurred when the Respondent hired Porteous and Lance—on March 24 and April 28. Furthermore, Sherman and Horn

appeared well qualified for those plumbing positions. Sherman had 30 years of experience, while Horn had 32 years of experience. Lastly, as previously explained, the Respondent had a history of antiunion animus. Under the circumstances, I conclude that the Respondent violated Section 8(a)(3) by failing to hire Sherman on March 24 and Horn on April 28.

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## II. The 8(a)(1) Violations

The General Counsel alleges that the Respondent violated Section 8(a)(1) on two occasions. The first occasion occurred when Metzger told Tkaczyk and Tamburro on May 6 they would not likely be hired because of their union membership. The second occasion occurred when Metzger told union organizers Rhodes and Schick on May 27 that, if they applied, they were not likely to be hired because Christopher Spicer was afraid to get involved with unions.

Under Section 8(a)(1), it is an unfair labor practice for an employer to interfere with, restrain, or coerce its employees in the exercise of rights guaranteed by Section 7 of the Act. Unlike violations of Section 8(a)(3), however, an employer's antiunion animus is not a required element of Section 8(a)(1). See Standard-Coosa-Thatcher Carpet Yarn Div. v. NLRB, 691 F.2d 1133, 1138 (4th Cir. 1982). Rather, the issue is whether the employer engaged in conduct that, under the circumstances, reasonably tends to intimidate employees from engaging in protected activity. Medco Sec. Locks, Inc. v. NLRB, 142 F.3d 733, 745 (4th Cir. 1998); American Freightways Co., 124 NLRB 146, 147 (1959).

The credible and unrefuted testimony of Tkaczyk and Rhodes established that Metzger told them not to bother applying because Christopher Spicer did not want to be involved with unions. The statements communicated the futility of applying for work if an applicant had ever been involved with a union. As such, the statements had the effect of chilling employees' Section 7 rights to be members of a labor organization. The fact that Rhodes and Schick also worked for the union is of no consequence. An "employee" under the Act includes paid union organizers. *NLRB v. Town & Country Electric, Inc.,* 516 U.S. 85, 94–95 (1995). *Caterpillar, Inc.,* 322 NLRB 674, 675 (1996). Furthermore, based on the credible testimony of Settlemire, it is clear that Tkaczyk and Rhodes reasonably believed that Metzger was speaking for Christopher Spicer. Accordingly, Metzger was the Respondent's agent pursuant to Sections 2(2) and 2(13) of the Act. Under the circumstances, I conclude that the Respondent violated Section 8(a)(1) of the Act by telling employees on May 6 and 27 that it would not hire union members.

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#### Conclusions of Law

1. Alltek Plumbing, Heating and Air Conditioning Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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2. The Ohio State Association of Plumbing and Pipefitters Local 776, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and U.A. Local 50, Plumbers and Steamfitters, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, are labor organizations within the meaning of Section 2(5) of the Act.

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3. By refusing to consider for employment applicants Michael R. Sherman, Steven A. Horn, Laura Baldridge, Richard Stoermer, Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., Timothy M. Pearson, Ruben Longoria, Michael Smith, Stephen Cowan, Albert Longoria Jr., and Steven W. Tkaczyk, the Respondent violated Section 8(a)(3) of the Act.

4. By refusing to employ applicants Michael R. Sherman and Steven A. Horn, the Respondent violated Section 8(a)(3) of the Act.

- 5. By telling employees, on May 6 and 27, 2003, that they would not be hired because of their union membership, the Respondent violated Section 8(a)(1) of the Act.
  - 6. By engaging in the conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10 Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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Specifically, the Respondent will be ordered to offer Michael R. Sherman and Steven A. Horn instatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions. Additionally, the Respondent will be ordered to consider for employment Laura Baldridge, Richard Stoermer, Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., Timothy M. Pearson, Ruben Longoria, Michael Smith, and Stephen Cowan, Albert Longoria Jr. and Steven W. Tkaczyk. The Respondent shall make Sherman and Horn, as well as any of the 12 additional discriminatees whom the Respondent would have hired for job openings that existed from March 24, 2003 to date, whole for any loss of earnings and other benefits, computed on a quarterly basis from the date they would have been hired, less any interim net earnings, as prescribed in F.W. Woolworth Co., 90 NLRB 289 (1950), plus interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Questions concerning the number of jobs that would have been available during the period of discriminatory conduct and the use of remedial preferential hiring lists are reserved for determination in the compliance phase of this proceeding. See Progressive Electric, Inc., 344 NLRB No. 52 (2005) (slip op. at 11), citing Starcon, Inc., 323 NLRB 977 (1997); B E & K Construction Co., 321 NLRB 561, 562 (1996); Ultrasystems Western Constructors, 316 NLRB 1243 (1995).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

## ORDER

The Respondent, Alltek Plumbing, Heating and Air Conditioning Co., Delphos, Ohio, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Discriminating against any employee for membership in or support of the Ohio State
 Association of Plumbing and Pipefitters Local 776, United Association of Journeymen and
 Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, or U.A.

<sup>&</sup>lt;sup>23</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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Local 50, Plumbers and Steamfitters, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, or any other union.

- (b) Telling prospective applicants they will not be considered for employment because of their membership in or support for the Ohio State Association of Plumbing and Pipefitters Local 776, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, U.A. Local 50, Plumbers and Steamfitters, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, or any other union.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
  - 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of the Board's Order, offer Michael R. Sherman and Steven A. Horn instatement to the jobs for which they applied, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any losses sustained by reason of the discrimination against them in the manner set forth in the remedy section of this decision.
- (b) Consider for hire Laura Baldridge, Richard Stoermer, Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., Timothy M. Pearson, Ruben Longoria, Michael Smith, Stephen Cowan, Albert Longoria Jr., and Steven W. Tkaczyk. The Respondent shall make whole those whom it would have hired for any losses sustained by reason of the discrimination against them in the manner set forth in the remedy section of this decision.
- (c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its hiring office in Delphos, Ohio, copies of the attached notice marked "Appendix."<sup>24</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and applicants for employment are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2003.

<sup>&</sup>lt;sup>24</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

	(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.				
5	IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.				
	Dated, Washington, D.C.	May 4, 2005			
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			Michael A. Rosas Administrative Law Judge		
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## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Ohio State Association of Plumbing and Pipefitters Local 776, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and the UA Local 50 Plumbers and Steamfitters, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, or any other union.

WE WILL NOT coercively question you or prospective applicants about your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Michael R. Sherman and Steven A. Horn instatement to the jobs for which they applied on November 12, 2002, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits sustained by reason of the discrimination against them in the manner set forth in the remedy section of this decision.

WE WILL consider for hire Laura Baldridge, Richard Stoermer, Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., Timothy M. Pearson, Ruben Longoria, Michael Smith, Stephen Cowan, Albert Longoria Jr., and Steven W. Tkaczyk, and make whole any of the foregoing whom we would have hired for any loss of earnings and other benefits sustained by reason of the discrimination against them in the manner set forth in the remedy section of this decision.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful refusal to consider or refusal to hire Michael R. Sherman, Steven A. Horn, Laura Baldridge, Richard Stoermer, Daniel Farnsworth, Keith M. Jacobs, Daniel Kish, Albert Longoria Sr., Timothy M. Pearson, Ruben Longoria, Michael Smith, Stephen Cowan, Albert Longoria Jr., and Steven W. Tkaczyk, and WE WILL, within 3 days thereafter, notify each of them in writing

JD-33-05 Delphos, OH

	,			
		(Employer)		
Dated	Ву			
<u> </u>		(Representative)	(Title)	

that this has been done and that the prior refusal to consider or hire them will not be used

against them in any way.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695 Cleveland, Ohio 44199-2086 Hours: 8:15 a.m. to 4:45 p.m. 216-522-3716.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 216-522-3723.